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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION No. 162 OF 1999

1. Sudhir Girdhar Satpute)
Adult, Occu. Service)
)
2. Kum. Deepa Girdhar Satpute)
Adult)

3. Mrs. Shakuntala Arvind Kadav)
Adult, Occu.- Service)
) Applicants
4. Mrs. Gangubai Girdhar Satpute) (Orig.
Adult, Occu.- Household,) accused
All R/at Satpute Building,) Nos. 1 to 4)
Kalyan, Dist. Thane.)

Vs.

State of Maharashtra , at the)
instance of Bazarpeth)
Police Station, Kalyan.) . . Respondent

Mrs. D. C. Misra, advocate for the applicants.
Mrs. V. R. Bhosale, APP for respondent.

CORAM : V. R. KINGAONKAR,J.

DATE : APRIL 13, 2007.

ORAL JUDGMENT

1. Heard. I have gone through the record and

proceedings.

2. This Revision Petition arises out of judgment rendered by the Additional Sessions Judge, Kalyan, in Criminal Appeal No. 19 of 1994, confirming thereby conviction and sentence, awarded by the learned trial Court. The trial Court held the petitioners guilty for offence punishable under section 324, read with section 34 of I.P.Code. The petitioner no.1 Sudhir was sentenced to rigorous imprisonment for 6 months and to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for a period of one month. The other 3 accused were let off on admonition, though they were convicted.

3. It is well settled that re appreciation of evidence cannot be undertaken while deciding the Revision petition, under section 401 Cr.P.C. Obviously, the scope of the revision petition is to oversee whether first appellate court has committed any patent illegality, irregularity or arbitrariness while confirming the order of conviction and sentence. It appears that the incident giving rise to the prosecution occurred at about 4.30 p.m., on March 20th, 1992. Some

teenagers and youngsters were playing cricket in the court yard of Satpute building. Petitioner no.4 Smt. Gangubai is the landlady of the building. She was annoyed due to the nuisance, caused by the players, in the proximity of the building, and hence she flunged a basket full of water on them. There was exchange of some hot words. The complainant Nilesh Agrawal was one of them. He was caught hold of by petitioner nos.2 to 4 and petitioner no.1 Sudhir dealt a blow of knife under his chest. Then injured Nilesh raised hue and cry. Some witnesses intervened and took him away. He lodged a report to the police. He was rushed to the government hospital at Kalyan and was examined by the medical officer. It was noticed that he had received one bleeding injury on the left side of the chest wall, which was 3" long and 3" deep. After certain investigation, all the 4 accused were charge sheeted and tried for the offences punishable under section 324, read with section 34 of I.P.Code.

4. All petitioners / accused nos. 1 to 4 denied truth into the accusations. They raised defence of private protection, alleging that the complainant

and his friends had come up to the residence of accused no.4 Gangubai with intention to assault her. They pleaded that while the complainant and his friends were making attempt to assault her by means of stumps of the cricket, accused no.1 Sudhir pushed the same back, which caused the chest injury to the complainant.

5. Medical evidence of PW 7 Dr. D. R. Shetty, in support of the medical certificate exh.44 would show that the complainant received a cut injury on the left side of the chest wall. The Complainant's evidence corroborates case of the prosecution. There was no reason for him to falsely implicate the accused persons. His entire evidence is believed by the trial court, in respect of the alleged incident. The trial court as well as the first appellate court negatived the specific defence of self-protection, for the reason that no report was lodged by the petitioners, regarding such incidence of attempted assault by the complainant and his friends on the petitioner no.4/accused no.4. It is stated that petitioner no.3 Shakuntala /accused no.3 was employed in the office of Police Commissioner at Thane and hence

they did not lodge any report against the complainant. It is difficult to accept version of the defence in this behalf.

6. There is hardly any illegality or perversity committed by the trial court and the first appellate court while convicting the petitioners. Faced with this difficulty, the learned advocate Mr. Misra submitted that sentence awarded to the petitioner no.1 is highly disproportionate to the act committed by him. He would point out that the incident occurred due to nuisance caused by the complainant and his friends while playing cricket in the premises, which are part and parcel of the building, owned by the accused no.4. He further pointed out that petitioner no.1 was young at the relevant time. According to him, the petitioner No.l has already learnt a lesson. He was arrested and was in police custody for about one week. He would also submit that the landlady had dispute with the father of the complainant, on account of his tenement in the building.

7. So far as the proportionality of the sentence is concerned, it is important to note that

the learned Magistrate noticed that a civil dispute is pending between the landlady and father of the complainant, regarding arrears of rent. It appears that complainant's family members were found in arrears of five years rent. The learned Magistrate did not ascribe any particular reason while awarding sentence to Petitioner No.l Sudhir to suffer six months rigorous imprisonment and fine of Rs.500/-, in default further R.I., for a period of one month. However, he assigned certain reasons while while taking lenient view in respect of remaining accused. The learned Additional Sessions Judge also failed to assign any reason, as regards sentence of rigorous imprisonment, awarded to the petitioner no.1.

8. It cannot be ignored that there was Civil dispute going on between the accused persons and the family members of the complainant. The incident occurred due to the provocation caused by the landlady when she flunged basket full of water on the complainant and his friends. They called upon the landlady to explain as to why she had thrown water on them. It was nuisance caused by the complainant and his friends, which perhaps annoyed

the landlady. In other words, to some extent the complainant contributed to the genesis of the incident, though the accused could not prove the right of private defence. There is sufficient material on record to say that the petitioners were rather tired due to the day to day nuisance of the complainant and his friends, who used to play in the open court yard of the building and caused noise.

9. Moreover, the family members of the complainant were not paying rent to the landlady. It is probable that the incident occurred as a result of the annoyance caused due to conduct of the complainant and his family members. In this view of the matter, leniency ought to have been shown to the petitioner No.l while awarding the sentence. The quantum of sentence awarded to him is not in keeping with the relevant circumstances. He is not a habitual criminal. The incident occurred as a sort of reaction to the regular nuisance suffered by the landlady and her family members. The courts below did not keep in mind the doctrine of proportionality while awarding the sentence to the petitioner no.1. Incident occurred in 1992 and

now, it will not be proper to send the petitioner No.l behind the bars. He has undergone the imprisonment of fortnight during the intervening period, and detention prior to filing of the charge sheet. I think that the said period undergone by him would suffice the purpose and enhancement of the fine would meet the ends of justice.

10. In the result, the Revision Petition is partly allowed. The conviction awarded by both the courts below is maintained. The sentence of imprisonment of six months rigorous imprisonment to the petitioner no.1 Sudhir is set aside and modified by substitution of the sentence for a period, which he has already undergone, as under trial or after the conviction, prior to filing of the instant Revision petition, and the fine amount is increased to Rs.7,500/-, instead of Rs.500/-. He shall pay increased fine amount within 3 weeks by depositing the same in the trial court or else shall undergo simple imprisonment for 4 months. If the fine amount is deposited, an amount of Rs.5,000/- shall be made over to the complainant towards compensation under section 457 of Code of Criminal Procedure. The remaining order as regards

disposal of muddemal is maintained.

Sd/-
[V. R. KINGAONKAR, J.]